this was an agreement for the sale of an interest in lands, and void because not in writing as required by the Statute of Frauds. *Ham* v. *Massiot Real Estate Co.* (R. I., 1919.), 107 Atl. 1205.

Conceding that such a restriction creates an interest in land, and there being no part performance to take the promise out of the statute, it would seem difficult to escape the court's conclusion. In *Sprague* v. *Kimball,* 213 Mass. 380, the court, calling such a restriction an equitable easement, refused to grant relief. In *Pyper* v. *Whitman,* 32 R. I. 35, the grantor represented that all the lots in an area would be laid out according to an unrecorded plat, which showed the location of a certain street. In a suit to enjoin the grantor from changing the location of such street, the court held that no easement had been acquired. See also *Norton* v. *Ritter,* 106 N. Y. Supp. 129; *Squire* v. *Campbell,* 1 Myl. & Cr. 459; *Gilbert* v. *Peteler,* 38 Barb. 488. On the other hand, it has been held that a general building scheme maintained from its inception and relied upon by all parties in interest would create a binding restriction on all the lots, whether in the hands of the grantor or grantees, and whether all the deeds contained the restrictions or not. *Allen* v. *City of Detroit,* 167 Mich. 464; *Re Birmingham & Dist. Land Co.* [1893], 1 Ch. D. 681. Relief has also been granted on the grounds of estoppel arising out of reliance upon the grantor's promise. *Bunson* v. *Bultman,* 38 N. Y. Supp. 209. In *Talmadge* v. *The East River Bank* 26 N. Y. 105, the court contented itself by saying that the equity arising from such representations attached to the remaining lots. See also *Hubbell* v. *Warren,* 8 Allen 173; *Parker* v. *Nightengale,* 6 Allen 341. In most of these cases no legal remedy was available, as there was neither privity of contract nor privity of estate between the parties. This may account for the liberality with which some courts of equity have regarded such oral restrictions. While the cases are not entirely in harmony, it may be gathered from the decisions that in the absence of fraud or part performance relief will not be granted unless there is expressly or by necessary implication an intention on the part of the grantor that the restriction shall permanently bind the land retained. Such an intention is manifested in cases where lots are sold with reference to a general building plan. See note in 45 L. R. A. (N. S.) 962.

FOREIGN EXECUTORS—SUITS BY AND AGAINST FOREIGN EXECUTORS.—Under certain conditions a statute authorized foreign executors and administrators to sue and be sued. D, a foreign executor, was sued in his representative capacity while within the jurisdiction. D moved to set aside the service. *Held,* the court had no jurisdiction and the statute must be construed as giving privilege of suing in all cases, but as taking away immunity from suit only in those cases where there are local assets, as any other construction would render that part of the statute unconstitutional. *Helme v. Buckelew* (N. Y., 1920), 128 N. E. 216.

In the absence of statute the general rule is that a foreign executor cannot sue or be sued in his representative capacity unless there is a *res* to give the court jurisdiction. *Jefferson* v. *Ball,* 117 Ala. 436; *Greer* v. *Fergu-*

son, 56 Ark. 324. Moreover, it cannot be doubted that the state may by statute extend the privilege of suing to foreign executors, but whether it can destroy the immunity from suit where there are no local assets, and without the consent of the state granting the letters, is easily distinguishable upon principle. In one case, however, this distinction was ignored and a suit against a foreign executor was sustained. *Cady* v. *Bard,* 21 Kan. 667; but the court cites no authorities to sustain its decision. In *Thorburn* v. *Gates,* 225 Fed. 613, the Federal Court was called upon to construe the same statute involved in the principal case, and to avoid holding a part of the statute unconstitutional limited the operation of that part of the statute abridging the immunity of foreign executors from suit to those cases where the law of the state appointing the executor authorized a foreign action. In a note to that case in 29 HARV. L. REV. 442, the opinion was asserted that this was a strained construction and that a more reasonable interpretation would limit the operation of the statute to cases where there were local assets. This view is adopted in the principal case. For an exhaustive compilation of authorities on the general subject, see 27 L. R. A. 101.

HEPBURN ACT—COMMODITIES CLAUSE—HOLDING COMPANY.—A holding company acquired all the stock of a coal mining company and all the stock of the railroad company whose road extended from the mine fields of the coal company to the market. The organization and operation of the holding and each subsidiary company was kept entirely separate, but all three had the same officers and directors. In an action by the government for dissolution under the act of June 29, 1906, making it unlawful for any railroad company to transport in interstate commerce any commodity produced or mined by it, or under its authority or in which it may have an interest direct or indirect, except such commodities as are used by it; *held,* the coal is mined and transported under the same *authority* in violation of the act. *United States* v. *Reading Co.* (1920), 40 Sup. Ct. 425.

The decision represents another victory for reality, in applying the act, over the fiction of corporate entity; and puts into discard one more scheme to consolidate the ultimate control over production and transportation of a commodity and yet not violate the act. In *United States* v. *Delaware & Hudson Co.,* 213 U. S. 366, it was held that the interest, direct or indirect, in the commodity was limited to the legal or equitable meaning, and did not include articles or commodities produced by a *bona fide corporation* in which the railroad company is a stockholder. But in *United States* v. *Lehigh Valley Railroad Co.,* 220 U. S. 257, the court held that where the railroad company owned all the stock of the mining company and reduced it to a mere department, the mining company would not be considered *bona fide,* and the act was therefore not avoided by the theory of separate entity. Later a railroad company owning mines attempted to circumvent the act by organizing a sales company, the stock of which was issued to the railroad shareholders in lieu of dividends. The sales company contracted for the output of the mines and became the legal owner of the coal transported over the